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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/335,127	06/17/1999	WILLIAM PATRICK COAN	113444	6119
23838	7590	12/02/2003		
KENYON & KENYON 1500 K STREET, N.W., SUITE 700 WASHINGTON, DC 20005				
			EXAMINER LEE, JOHN J	
			ART UNIT 2684	PAPER NUMBER 17
DATE MAILED: 12/02/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/335,127

Applicant(s)

COAN ET AL.

Examiner

JOHN J LEE

Art Unit

2684

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 – 20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Re Claims 1, 3, 7, 9, 13, and 15, Applicant added the new limitation “determining based on a latency dependency of the data” was not described in the specification. The specification was only described the determination is based on the size of the data to be transmitted, and how much the data depends on the connection’s latency and determination based on at least an upper limit on the size of the data to be sent (see pages 4, lines 14 – 21). However, The specification was not described the method of computation/measurement the latency of the data and also was not supported method of recognizing/determining the latency in the data.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 1 – 20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kumar et al. (US Patent number 6,434,367) in view of Griefer (US Patent number 5,615,213).

Regarding **claim 1**, Kumar discloses that a method for wireless communication for non-latency dependent data, the method comprising:

receiving data for transmission to a base station (Fig. 8, 9) (column 6, lines 27 – 64);

if the data is not appropriate for transmission over a digital control channel, transmitting the data over a SCH (supplemental channel) (column 10, lines 27 – column 12, lines 19 and column 16, lines 3 – column 17, lines 8).

Kumar does not specifically disclose the limitation “if the data is not appropriate for transmission over a digital control channel, transmitting the data over a traffic channel and determining whether the data is appropriate for transmission over a digital control channel”. However, Griefer discloses the limitation “if the data is not appropriate for transmission over a digital control channel, transmitting the data over a traffic channel and determining whether the data is appropriate for transmission over a digital control channel” (Fig. 3 and column 6, lines 6 – column 7, lines 50). It would have been obvious

to one having ordinary skill in the art, at the time the invention was made to modify the Kumar system as taught by Grier. The motivation does so would be to minimize the network resource in communication system.

Regarding **claim 2**, Kumar does not specifically disclose the limitation “the determining includes determining whether the data is less than a predetermined size”. However, Grier discloses the limitation “the determining includes determining whether the data is less than a predetermined size” (Fig. 3 and column 6, lines 6 – column 7, lines 50). It would have been obvious to one having ordinary skill in the art, at the time the invention was made to modify the Kumar system as taught by Grier. The motivation does so would be to minimize the network resource and enhance the managing system in communication system.

Regarding **claim 3**, Kumar and Grier disclose all the limitation, as discussed in claims 1 and 2.

Regarding **claim 4**, Kumar and Grier disclose all the limitation, as discussed in claims 1 and 3.

Regarding **claim 5**, Kumar discloses all the limitation, as discussed in claims 1 and 2.

Regarding **claim 6**, Kumar and Grier disclose all the limitation, as discussed in claims 1 and 2.

Regarding **claim 7**, Kumar and Grier disclose all the limitation, as discussed in claims 3 and 4. However, Kumar does not specifically disclose the limitation “monitoring network conditions for conditions favorable for transmission”. However, Grier

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discloses the limitation “monitoring network conditions for conditions favorable for transmission” (Fig. 3 and column 6, lines 6 – column 7, lines 50). It would have been obvious to one having ordinary skill in the art, at the time the invention was made to modify the Kumar system as taught by Grier. The motivation does so would be to minimize the network traffic resource over the network.

Regarding **claim 8**, Kumar and Grier disclose all the limitation, as discussed in claims 3 and 6.

Regarding **claim 9**, Kumar and Grier disclose all the limitation, as discussed in claims 3 and 7. However, Kumar does not specifically disclose the limitation “a memory coupled to said processor, said memory storing instructions adapted to be executed on said processor”. However, Grier discloses the limitation “a memory coupled to said processor, said memory storing instructions adapted to be executed on said processor” (Fig. 2 and column 3, lines 62 – column 5, lines 57). It would have been obvious to one having ordinary skill in the art, at the time the invention was made to modify the Kumar system as taught by Grier. Doing so would enhance the transmitting data adaptability in communication system.

Regarding **claim 10**, Kumar and Grier disclose all the limitation, as discussed in claims 3 and 4.

Regarding **claim 11**, Kumar and Grier disclose all the limitation, as discussed in claims 3 and 5.

Regarding **claim 12**, Kumar and Grier disclose all the limitation, as discussed in claims 3 and 6.

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Regarding **claim 13**, Kumar and Grier disclose all the limitation, as discussed in claims 7 and 9.

Regarding **claim 14**, Kumar and Grier disclose all the limitation, as discussed in claims 6 and 13.

Regarding **claim 15**, Kumar and Grier disclose all the limitation, as discussed in claims 3 and 9.

Regarding **claim 16**, Kumar and Grier disclose all the limitation, as discussed in claims 3 and 4.

Regarding **claim 17**, Kumar and Grier disclose all the limitation, as discussed in claims 3 and 5.

Regarding **claim 18**, Kumar and Grier disclose all the limitation, as discussed in claims 3 and 6.

Regarding **claim 19**, Kumar and Grier disclose all the limitation, as discussed in claims 7 and 9.

Regarding **claim 20**, Kumar and Grier disclose all the limitation, as discussed in claims 3 and 6.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Ahuja et al. (US Patent number 6,222,837) discloses Internet Service via ISDN.

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Wrede et al. (US Patent number 5,937,040) discloses Using a D-Channel for
Displaying User Data.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 308-9051, (for formal communications intended for entry)

Or:

(703) 308-6606 (for informal or draft communications, please label
"PROPOSED" or "DRAFT").

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal
Drive, Arlington, VA., Sixth Floor (Receptionist).

Any inquiry concerning this communication or earlier communications from the
examiner should be directed to **John J. Lee** whose telephone number is **(703) 306-5936**.
He can normally be reached Monday-Thursday and alternate Fridays from 8:30am-5:00
pm. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, **Nay
Aung Maung**, can be reached on **(703) 308-7745**. Any inquiry of a general nature or
relating to the status of this application should be directed to the Group receptionist
whose telephone number is (703) 305-4700.

J.L.
November 26, 2003

John J Lee

